UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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THERESE L. LESHER,

Plaintiff,

v.

CITY OF ANDERSON, a municipal corporation; CITY OF ANDERSON POLICE SERGEANT SEAN MILLER, individually; CITY OF ANDERSON POLICE OFFICERS JEFFREY MILEY, individually, and KAMERON LEE, individually, and DOES 1-50, jointly and severally,

Defendants.

No. 2:21-cv-00386 WBS DMC

MEMORANDUM AND ORDER RE: MOTION TO DISMISS

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Plaintiff Therese Lesher ("plaintiff") brought this action against the City of Anderson ("Anderson" or "City"), Anderson Police Sergeant Sean Miller, Anderson Police Officers Jeffrey Miley and Kameron Lee, and DOES 1-50 seeking damages for violation of the First, Fourth, and Fourteenth Amendments under 42 U.S.C. § 1983; municipal and supervisory liability under 42

U.S.C. § 1983; violation of the Tom Bane Civil Rights Act, Cal. Civil Code § 52.1; malicious prosecution; violation of Article 1, § 13 of the California Constitution; assault and battery; false arrest and imprisonment; and negligence. (See Second Am. Compl. ("SAC") (Docket No. 28).)

The City of Anderson now moves to dismiss the fourth cause of action of the SAC for municipal liability under 42 U.S.C. § 1983. (See Mot. to Dismiss (Docket No. 29).)

I. Factual and Procedural Background

On or about August 13, 2019, at approximately 12:30 a.m., plaintiff was sitting on the porch of her apartment building talking with her cousin, Denhene Leach, and two other persons, accompanied by Leach's dog. (See SAC at ¶ 17.) Several Anderson Police Department ("APD") vehicles pulled into the parking lot in front of the building without lights or sirens. (See id. at ¶ 18.) Unbeknownst to plaintiff and her group, another tenant of the apartment complex had called in a noise complaint to the APD. (See id.) Leach's dog left the porch and walked in the direction of the officers, who had exited their vehicles. (See id. at ¶ 19.) Suddenly, one of the officers yelled that he had allegedly been bitten by Leach's dog. (See id.) The dog was then retrieved and taken into Leach's apartment. (See id.)

Plaintiff's dog, which was locked in her vehicle, began barking. (See id. at ¶ 20.) Plaintiff went to her car to calm down her dog and ensure that it stayed in her vehicle. (See id.) As plaintiff approached her vehicle, defendant officer Miley yelled for her to control her dog. (See id.) He told her that

he would pepper spray the dog or shoot it if plaintiff did not control the dog's barking. (See id.) In response, plaintiff reached into the partially open rear window of the vehicle and grabbed hold of her dog's harness. (See id.)

Plaintiff disapproved of the way the officers were performing their duties in their interactions with her and Leach. (See id. at ¶ 21.) Accordingly, she criticized defendants, including Miley and Miller, and expressed her disapproval of the way they were conducting themselves. (See id.) Without warning, plaintiff was then thrown against the side of her vehicle, subjected to various uses of force, and handcuffed by defendants Miller, Miley, and Lee. (See id. at ¶ 22.)

Plaintiff was searched and arrested, and her personal property was removed from her person. (See id.) She was transported to the Shasta County Jail and booked by defendants for alleged violations of California Penal Code sections 69 (using threats or violence to prevent executive officers from performing their duties or resisting executive officers in the performance of their duties), 647(f) (being so intoxicated in a public place that one is unable to care for their own safety or the safety of others), and 148(a)(1) (resisting, delaying, or obstructing a law enforcement officer). (See id.) Plaintiff contends that she was cooperative, spoke calmly, and obeyed the officers' commands at all material times. (See id.) She sustained an injury to her left forearm, fractures to her clavicle and left finger, and property damage. (See id. at ¶¶ 26, 29.)

Based on the arrest, plaintiff was criminally

prosecuted in Shasta County, California, for three misdemeanor counts of violation of Penal Code section 148(a)(1). (See id. at ¶ 23.) Plaintiff alleges that defendants Miller, Lee, and Miley deliberately and knowingly misrepresented the facts of the incident and her behavior when reporting the incident, leading to her prosecution, and continued to do so up to and during trial. (See id.) She alleges they did so, and that these misrepresentations were provided to the Shasta County District Attorney's Office, to make plaintiff defend herself against criminal charges the officers knew were illegitimate and to cover up their own criminal acts and abuse of authority. (See id. at ¶ 24.)

On September 24, 2020, plaintiff was acquitted on all three counts after a jury trial. (See id. at ¶ 25.) Plaintiff alleges that in addition to her injuries and property damage, defendants' conduct also caused her to lose income and to have to pay bail and attorneys' fees. (See id. at ¶ 29.)

Plaintiff filed the instant action in this court on March 2, 2021. (See Docket No. 1.) On June 30, 2021, the court granted defendants' motion to dismiss plaintiff's § 1983 claim for municipal liability against the City. (See Docket No. 19.) Plaintiff filed a First Amended Complaint on July 20, 2021, (Docket No. 20), and, per the parties' stipulation, a Second Amended Complaint on September 5, 2021, (Docket No. 28).

II. Discussion

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal when a complaint fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). "A Rule

12(b)(6) motion tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them. Id.

Dismissal is proper where a complaint fails to allege "sufficient facts . . . to support a cognizable legal theory," id., or to state "a claim to relief that is plausible on its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. Although legal conclusions "can provide the framework of a complaint, they must be supported by factual allegations." Id. at 679.

Because 42 U.S.C. § 1983 does not provide for vicarious liability, a local government "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." Monell v. Dep't of Social Servs. of the City of N.Y., 436 U.S. 658, 694 (1978). "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may be fairly said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Id. Here, plaintiff seeks to establish municipal liability on the part of the City for (1) having an unconstitutional custom or policy, (2) ratifying the decisions of

the police officers who caused the constitutional violations, and (3) failing to adequately train its police officers. (SAC at ¶¶ 51-60 (Docket No. 28).)

A. Unconstitutional Custom or Policy

To establish Monell liability based upon an unconstitutional custom or policy, a plaintiff must prove "the existence of a widespread practice that, although not authorized by written law or express municipal policy, is 'so permanent and well settled as to constitute a custom or usage with the force of law.'" City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (plurality opinion) (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-68 (1970)).

At the motion to dismiss stage, a plaintiff must do more than simply allege that a Monell defendant "maintained or permitted an official policy, custom, or practice of knowingly permitting the occurrence of the type of wrongs" alleged elsewhere in the complaint. Rather, the complaint must allege "additional facts regarding the specific nature of that alleged policy, custom[,] or practice." See AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012).

It is unclear from the SAC exactly what practice or practices plaintiff relies upon to establish an unconstitutional custom or policy causally related to the conduct which is the subject of this case. See Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 406 (1997) (holding that a Monell claim lies where "the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights").

The SAC lists, in shotgun fashion, ten so-called "customs, policies, practices, and/or procedures" upon which plaintiff's Monell claim is based. (See SAC at ¶ 52 (Docket No. 28).)[1] Each of these is couched in broad terms, such as "[f]ailure to supervise and/or discipline officers for misconduct that results in the violation of citizens' civil rights," or "[u]sing or tolerating inadequate, deficient, and/or improper procedures for handling, investigating, and reviewing complaints of officer misconduct." (Id.) If such generalized descriptions were deemed sufficient, a plaintiff would be able to survive a motion to dismiss a Monell claim in just about every excessive force case under § 1983.

Even where the policy or custom is adequately specified in the complaint, the plaintiff also "must ordinarily point to a pattern of prior, similar violations of federally protected rights, of which the relevant policymakers had actual or constructive notice." Hyun Ju Park v. City & Cnty. of Honolulu, 952 F.3d 1136, 1142 (9th Cir. 2020) (citing Connick v. Thompson, 563 U.S. 51, 62 (2011); Clouthier v. Cnty. of Contra Costa, 591 F.3d 1232, 1253 (9th Cir. 2010)); see, e.g., Perryman v. City of

[1] In all respects pertinent to plaintiff's unlawful policy or custom theory, these allegations are identical to those in plaintiff's original complaint. (Compare Compl. at ¶ 41 (Docket No. 1) with SAC at ¶ 52 (Docket No. 28).) In its Order granting in part defendants' motion to dismiss that complaint, the court held that because plaintiff had "merely allege[d] that the defendant has a policy or custom of performing various wrongs alleged elsewhere in her complaint," she failed to adequately plead a Monell claim. (Docket No. 19 at 9-10 (citing AE ex. rel. Hernandez, 666 F.3d at 637; Bagley v. City of Sunnyvale, 16-cv-02250 LHK, 2017 WL 344998, at *16 (N.D. Cal. Jan. 24, 2017); Mendy v. City of Fremont, 13-cv-4180 MMC, 2014 WL 574599, at *3 (N.D. Cal. Feb. 12, 2014)).)

Pittsburg, -- F. Supp. 3d --, 2021 WL 493396, at *3 (N.D. Cal. Feb. 10, 2021) (considering prior incidents in deciding whether Monell complaint adequately identified pattern of past violations); Hughey v. Drummond, 2:14-cv-00037 TLN AC, 2017 WL 590265, at *6 (E.D. Cal. Feb. 14, 2017) (same); see also Bagley v. City of Sunnyvale, 16-cv-02250 LHK, 2017 WL 344998, at *15 (N.D. Cal. Jan. 24, 2017) (granting motion to dismiss Monell claim because plaintiff failed to "allege any facts that indicate that the [city's] police force is regularly taking actions involving excessive force or unlawful arrests" and instead "only [pled] actions related to his own arrest and prosecution").

In an attempt to show a pattern of prior, similar violations of federally protected rights of which the City policymakers had actual or constructive notice, plaintiff identifies four other lawsuits against Anderson and APD officers. (See SAC at ¶ 57 (Docket No. 28) (citing Haught v. City of Anderson, et al., 2:11-cv-1653 JAM CKD (E.D. Cal. 2011); Knighten v. City of Anderson, et al., 2:15-cv-1751 TLN CMK (E.D. Cal. 2015); McMillan v. County of Shasta, et al., 2:20-cv-00564 JAM EFB (E.D. Cal. 2020); Rawlins v. City of Anderson, et. al., 2:21-cv-00567 TLN DMC (E.D. Cal. 2021)).)[2]

To determine whether this history of previous lawsuits is sufficient to plausibly allege a municipal policy, custom or practice at the pleading stage, the court considers all of the

[2] Defendant City requests that the court take judicial notice of the docket and papers filed in the four cases plaintiff identifies in her Second Amended Complaint. (See Req. for Jud. Notice (Docket No. 29-2).) Plaintiff has not opposed that request. (See Opp. to Mot. (Docket No. 34).) Accordingly, the City's request is granted.

relevant factors, including (1) the number of prior lawsuits; (2) the allegations in those lawsuits, including the degree of similarity between the facts alleged in the prior lawsuits and the facts alleged in the action under consideration; (3) the timing of the prior lawsuits; (4) the disposition of the prior lawsuits; (5) the number and identity of defendants in the prior lawsuits, including whether the municipality itself was a defendant and whether any of the defendants in the prior lawsuits were the same as the defendants in the case under consideration; and (6) the size of the municipality in relation to the number and type of lawsuits.

Here, the previous cases in which APD officers were alleged to have committed § 1983 violations were all relatively recent, having been filed in the last ten years, and the although the size of the APD is not alleged in the SAC, the court can take judicial notice that Anderson is a relatively small city in Shasta County, California, with a population of a little over 10,000. With regard to the number of prior cases, while the Ninth Circuit has suggested that one or two prior similar incidents, standing alone, are generally insufficient to prove the existence of an unconstitutional custom or practice,[3] the law does not establish a precise number of previous lawsuits which must be alleged to overcome a motion to dismiss. See Gonzalez v. Cnty. of Merced, 289 F. Supp. 3d 1094, 1099 (E.D. Cal. 2017) (O'Neill, J.) (observing same); (see also Mot. at 7-8 (Docket No.

[3] See, e.g., Davis v. City of Ellensburg, 869 F.2d 1230, 1235 (9th Cir. 1989) (one incident cannot establish a practice); Meehan v. Cnty. of Los Angeles, 856 F.2d 102, 107 (9th Cir. 1988) (two incidents cannot establish a custom).

29-1) (contending that the four prior incidents identified by plaintiff in her Second Amended Complaint put it into a precedential "grey area")).

Accordingly, to determine whether the existence of these previous lawsuits is sufficient to establish a pattern of prior, similar violations of federally protected rights, of which the relevant policymakers had actual or constructive notice, the court must look to the other relevant factors, including the similarity of the allegations in the prior cases to the allegations in this case, the defendants in the prior cases, and the disposition of those cases.

The most similar of the prior cited cases is Knighten, in which defendant Miller in the instant case was alleged to have reached into the plaintiff's car window, pulled him against the inside of the car door, twisted his arm, and slammed him against Miller's vehicle before informing the man he was under arrest for making a "door ding" on Miller's vehicle. (See SAC at ¶ 57 (citing 2:15-cv-01751 TLN CMK, Docket No. 21 at ¶¶ 3, 6-8).)[4]

Haught, however, bears no similarity whatsoever to the present case. There, the plaintiff, who had already been

[4] In her Second Amended Complaint, plaintiff notes that the court in Knighten also identified several other complaints for alleged uses of excessive force by Miller. (See SAC at ¶ 57 (citing Knighten, 2:15-cv-01751 TLN CMK) (Docket No. 28).) However, because the nature and circumstances of those uses of force are not apparent, the court cannot conclude that they are sufficiently similar to the uses of excessive force alleged here. Moreover, while prior unlawful acts of Miller, if they were sufficiently similar to the conduct alleged in this case, might be relevant to show a common practice on his part, they would do little to establish a department-wide practice in order to support Monell liability.

arrested, alleged she was subsequently driven to a remote location and raped. (See id. (citing 2:11-cv-01653 JAM CMK).) Similarly, the allegations in McMillian bear little resemblance to the facts alleged here. There, the plaintiff alleged he was arrested, that he was placed in handcuffs that were too tight and placed into a patrol car, that the officer threatened to slam the car door on him, and that the officer shoved his legs inside of the car before closing the door. (See id. (citing 2:20-cv-00564 JAM EFB, Docket No. 43 at ¶¶ 20-27, 29, 92).) And in Rawlins, the plaintiff alleged an officer instructed her to move her vehicle, and when she checked her child's car seat before doing so, the officer reached into her vehicle, grabbed and twisted her arm, and handcuffed and arrested her. (See id. (citing 2:21-cv-00567 TLN DMC, Docket No. 1 at ¶ 18).)

With the possible exception of Knighten, the manner of arrest and use of force in the other referenced cases, except for the fact that a car was in some way involved, do not resemble those alleged here, and thus do not plausibly suggest an unlawful policy or custom of excessive force or false arrest. Nor do those cases support, with the possible exception of McMillian, the existence of the alleged unlawful policies or customs of retaliatory arrest or "hurt a person – charge a person." One similar prior incident does not plausibly suggest the existence of "a widespread practice . . . so permanent and well settled as to constitute a custom or usage with the force of law." Praprotnik, 485 U.S. at 127 (citation and quotation marks omitted). "[R]andom acts" or "isolated or sporadic incidents" are insufficient to prove the existence of an unconstitutional

custom or practice. Navarro v. Block, 72 F.3d 712, 714 (9th Cir. 1995); Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). Rather, the plaintiff must prove that the custom or practice in question has "sufficient duration, frequency[,] and consistency that [it] has become a traditional method of carrying out policy." Trevino, 99 F.3d at 918.

Finally, at oral argument on the motion, counsel represented to the court that none of the four referenced cases went to judgment. It was represented that two of them settled, and the other two were still pending. Settlement of a lawsuit does not establish the truth of the plaintiff's allegations, and without a judgment against the defendants, the allegations of a complaint are little more than unproven allegations.

For the foregoing reasons, the court concludes that plaintiff has failed to state a claim for Monell liability based on unlawful policy or custom.

B. Ratification

The Ninth Circuit has "found municipal liability on the basis of ratification when the officials involved adopted and expressly approved of the acts of others who caused the constitutional violation." Trevino, 99 F.3d at 920. To show ratification, a plaintiff must demonstrate that the municipality's "authorized policymakers approve[d] a subordinate's decision and the basis for it." Christie v. Iopa, 176 F.3d 1231, 1239 (9th Cir. 1999) (quoting Praprotnik, 485 U.S. at 127). "Ratification . . . generally requires more than acquiescence"; policymakers must "ma[k]e a deliberate choice to endorse the officer[']s[ ] actions." Sheehan v. City & Cnty. of

San Francisco, 743 F.3d 1211, 1231 (9th Cir. 2014) (internal quotation marks omitted), rev'd in part on other grounds, 575 U.S. 600, 610-17 (2015).

In its previous order, the court held that plaintiff's original complaint failed to state a Monell claim under a ratification theory. (See Docket No. 19 at 10-11.) It did so because the complaint included only "conclusory pleading" in support of ratification, rather than "any factual allegations regarding any approval or ratification by Anderson . . . or the basis for such approval." (See id.)

Plaintiff's new allegations in support of her ratification claim appear to consist solely of her references to the prior lawsuits, which include allegations of excessive force and false arrest against defendants Miller and Lee, arguing that their continued employment by Anderson despite being named in those lawsuits "emboldened Defendants Miller and Lee to continue to commit violations without fearing discipline, demotion, or termination." (See SAC at ¶ 58 (Docket No. 28).) Plaintiff also points to the allegation in Knighten that Miller was promoted to Sergeant and given a pay raise after the incident at issue in that case. (See id.)

However, plaintiff has not provided any factual allegations identifying any authorized policymakers who approved the officers' actions and the basis for such approval. See Christie, 176 F.3d at 1239. Such conclusory pleading, absent any supporting factual allegations, does not sufficiently state a Monell claim. See Hicks v. Cnty. of Stanislaus, 1:17-cv-01187 LJO SAB, 2018 WL 347790, at *6 (E.D. Cal. Jan. 10, 2018)

(dismissing ratification claim where complaint contained no factual allegations to support claim that defendant county "approved, ratified, condoned, encourage, sought to cover up, and/or tacitly authorized" conduct of police unit). Plaintiff has therefore failed to state a cognizable claim of ratification under Monell.

C. Failure to Train

To state a claim for failure to train under Monell, a plaintiff must show that (1) the existing training program is inadequate "in relation to the tasks the particular officers must perform"; (2) the relevant officials were "deliberate[ly] indifferen[t] to the rights of persons with whom the police come into contact"; and (3) the inadequacy of the training "'actually caused' a deprivation of [the plaintiff's] constitutional rights." Merritt v. Cnty. of Los Angeles, 875 F.2d 765, 770 (9th Cir. 1989) (quoting City of Canton v. Harris, 489 U.S. 378, 388, 390-91 (1989)).

In her opposition, plaintiff contends that the Second Amended Complaint adequately states a Monell claim based on failure to train "for the same reasons as . . . with respect to Plaintiff's policy, custom, or practice Monell claim." (Opp. to Mot. at 25-26 (Docket No. 34).) However, as the court has already concluded, plaintiff has not adequately stated a Monell claim based on unlawful policy or custom.

Further, the Second Amended Complaint contains hardly any references to the City's training programs or alleged deficiencies therein, and plaintiff does not explain how the alleged unconstitutional policies or customs addressed above

necessarily also evince a lack of training. Indeed, since her original complaint, plaintiff appears to have removed most of her complaint's references to "training." (Compare, e.g., Compl. at ¶¶ 42, 47 (Docket No. 1) (alleging City "fail[ed] to properly . . . hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline" defendant officers) (emphasis added) with SAC at ¶¶ 53, 59 (Docket No. 28) (alleging City "fail[ed] to properly . . . monitor, supervise, evaluate, investigate, and discipline" defendant officers).)

Plaintiff has provided no factual allegations as to (1) how Anderson's officer training is inadequate, (2) how the relevant officials have been deliberately indifferent to the rights of Anderson citizens, or (3) how the inadequacy of the training actually caused the alleged deprivation of plaintiff's constitutional rights. See Merritt, 875 F.2d at 770. In fact, plaintiff has provided no factual allegations whatsoever regarding the Anderson officer training program. (See SAC (Docket No. 28).) Accordingly, plaintiff has failed to state a cognizable claim of failure to train under Monell.

For the reasons stated, plaintiff has failed to state a claim for municipal liability under Monell based on failure to train.

III. Conclusion

For all of the foregoing reasons, the court concludes that the fourth cause of action of the SAC fails to state a claim against the City of Anderson for municipal liability under 42 U.S.C. § 1983.

Counsel for plaintiff has suggested that plaintiff be

allowed to proceed on the bare-bones generalized allegations in the SAC at least until she has had the opportunity to conduct some limited discovery to develop facts to support her Monell claim. There are sound reasons why the law does not permit a plaintiff to do that. Particularly given the current the state of the economy, a city of the size and location of Anderson understandably has limited resources. Before a plaintiff may be permitted to tap into those resources to require responses to the kind of discovery requests which could be expected in order to develop a direct claim against the City, the law requires the plaintiff to come forward with something of more substance and specificity than the kind of generalized conclusions and speculation in plaintiff's SAC. And because plaintiff has unable to state a viable claim under Monell after multiple rounds of amendment to the complaint, the court declines to grant further leave to amend.

IT IS THEREFORE ORDERED that defendants' motion to dismiss plaintiff's fourth cause of action, alleging municipal liability under § 1983, be, and the same hereby is, GRANTED.

Dated: December 2, 2021

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE